

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Kennedy v Peter Neale t/as Pete's Hot Rod and Retro Shop* [2018] QCAT

PARTIES: **LEX KENNEDY**
(applicant)
v
**PETER NEALE T/AS PETE'S HOT ROD AND
RETRO SHOP**
(respondent)

APPLICATION NO/S: MCDO1872/17

MATTER TYPE: Other minor civil dispute matters

DELIVERED ON: 26 July 2018

HEARING DATE: 30 November 2017

HEARD AT: Brisbane

DECISION OF: Member Favell

ORDERS: **1. Application allowed.**
2. The respondent to pay the applicant the sum of \$25,000.00.

CATCHWORDS: MINOR CIVIL DISPUTE – CONSUMER DISPUTE – where works were to be completed on car – where the car exhibited defects after work had been done on the car – whether works completed on the car contributed to that damage

APPEARANCES &
REPRESENTATION:

Applicant: P G Jeffery, instructed by Sterling Moore

Respondent: A Hellewell

REASONS FOR DECISION

- [1] Mr Kennedy's family had a steel 1935 Ford Roadster which he refers to as "the hot rod" for over 57 years. It had been passed between numerous family members in generations over some time. At the time of this application he was the owner of the hot rod having purchased it from his uncle. The sale to him of the hot rod was on the condition that the car be built so that his uncle could drive it before he died. As of 27 October 2017 his uncle was 72.
- [2] The material filed on behalf of the applicant including an affidavit by him asserts that on or about 24 May 2014 he orally engaged the respondent to carry out works on the

hot rod. He said that the respondent orally estimated the total cost of the works to be \$6,000.00. The applicant and the respondent had been close friends for over 13 years. The applicant had served a school based apprenticeship under the respondent.

- [3] The applicant says that he and the respondent agreed that the works on the hot rod were to include:
- (a) modifying and re-engineering the original 1935 Ford Roadster chassis and K frame to accommodate and handle supplied front and rear suspending, an engine of 550 horsepower, a 5 speed manual gearbox, a differential and all associated supplied parts for use as a fully engineered and registered street car; and
 - (b) Modify the rear of the chassis to have a 2.5 inch kick up and tubbed in two inches each side.
- [4] The applicant says that the works were to be charged on an hourly rate and the parts costs basis.
- [5] The material shows a photograph taken of the chassis, unmodified, strapped to a trailer on or about 24 May 2014.
- [6] The applicant says that between 24 May 2014 and 9 October 2014 the respondent attempted to carry out the works on the hot rod. Material contains a photograph taken of the 550 horse powered engine sitting in the chassis at the respondent's workshop before "any real work had started". The applicant says that that shows that the motor was to be used.
- [7] The respondent provided cash invoices for works which were paid in full by the applicant amounting to a sum of \$19,238.50. the applicant says that he paid that amount in five payments as follows:
- (a) \$1,000.00 on 25 May 2014;
 - (b) \$3,000.00 on 23 June 2014;
 - (c) \$4,000.00 on 17 July 2014;
 - (d) \$4,226.00 on 18 September 2014; and
 - (e) \$7,012.50 on 21 November 2014.
- [8] The applicant says that during the works he was working on a fly in fly out rotating roster of four weeks on and one week off. He says at some stage he was satisfied and happy with the photographs the respondent was providing. He says that subsequently he found that the photographs supplied to him were not exposing the floors of the chassis.
- [9] He says that on or about 21 November 2014 he inspected the hot rod at the respondent's premises for the first time since about 6 August 2014. That inspection occurred he says, because a disagreement had arisen over the latest invoice of hours charged for work claimed.
- [10] At the inspection he found defects in the rod's chassis in that there was a very poor workmanship; weak wells; twisting in the gearbox hub and evidence of re-work and

repairs to the chassis. The applicant claims that the hours of work invoiced and paid for was not evident in the work inspected. He claims that the engine mounts, gearbox cross member and K member appeared insufficient and dangerous for the horsepower of the engine and the purpose of the car.

- [11] On or about 21 November 2014 just after the inspection he demanded the return of the hot rod because of the viewed defects and the fact that he had exhausted his funds. At that time he paid the sum of \$7,012.50 under protest because the respondent would not let the chassis leave the workshop until the invoice was settled. It was then that the respondent removed the hot rod from the chassis jig. He was paid by the applicant \$50.00 to do so. The applicant was provided with all associated parts except the lengths of fuel line that were forgotten. The hot rod was transported via car trailer back to Brisbane. The applicant sought advice about how to rectify the hot rod from professional hot rod fabricators. As a result he was advised that the defects were extensive and the structural integrity of the hot rod chassis was potentially compromised.
- [12] A report of the inspection of the hot rod and an examination by a bore scope camera used to inspect the structural integrity inside the boxed chassis rails identified defects as:
- (a) Rod tech cross members – unusable;
 - (b) Boxing plates need removing;
 - (c) Chassis rust repairs not good – lack of weld;
 - (d) Entire chassis external/internal boxing plates needed removing;
 - (e) No fish plates where chassis rail modified;
 - (f) Lack of penetration on wells;
 - (g) Chassis tubing needs reinforcing;
 - (h) Cross member – inadequate;
 - (i) Chassis rail twisted; and
 - (j) Gear box cross member not suitable.
- [13] The report and photographs of the hot rod chassis were provided at the hearing.
- [14] Mr Coade who in December 2014 was the President of the Queensland Street Rod Technical Advisory Committee gave his opinion as follows:

After our telephone conversation regarding your chassis it is with much regret that after the time and money you have spent that I would recommend that you should throw that chassis away and start again. Too much damage has been done. Because the whole thing would have to be pulled apart (inner and outer frame), manufacture a new centre section and try and get the twist out of it etc, etc, I just don't think it is repairable. The cost of starting again compared to trying to fix the old one would be too much.

- [15] The applicant believes that the respondent breached the agreement by failing to carry out works to an acceptable standard and/or has been negligent.
- [16] The applicant says that the respondent offered to fix all the problems and bad workmanship at no further cost to the applicant but the applicant believes that the chassis is irreparable, not fixable and a write off due to the respondent's poor workmanship and poor engineering. The applicant says that he has obtained five independent reports which show that the chassis is irreparable. Those reports and the conclusions seem to confirm the concerns held by the applicant. The applicant maintains that even if he asked for the chassis to be rectified within a timeframe there would be no money for the respondent to make use of and the respondent would never be able to have an engineered solution approved due to the significant irreversible damage.
- [17] The applicant says the sentimental value to his family in respect of the chassis has been destroyed and the overall value of the car once completed would be dramatically reduced because it lost its authenticity. He maintains that professional chassis car salesman have verbally estimated a reduction of value between \$15,000.00 to \$20,000.00 due to the fact that there is no parts number matching the body and the chassis because the original chassis was destroyed. The applicant contends that the car represents more of a kit car now as an aftermarket chassis has now been used. He said that he was forced to purchase such a kit to continue to build the car.
- [18] He says that the hot rod was a very rare car of which only 400 were ever made in Australia and only 20 are left in Australia.
- [19] The applicant, after having regard to the jurisdiction of QCAT in respect of these matters makes a claim for \$25,000.00. He has particularised that claim as follows:
- (a) \$19,238.50;
 - (b) \$6,000.00 for a replacement chassis;
 - (c) \$704.00 replacement rod-tech IFS cross member;
 - (d) \$294.60 for filing fees;
- Totalling \$26,236.50.
- [20] The submissions of the respondent were to the following effect:
- (a) The chassis, whilst in the "jig" at the respondent's workshop was in perfect form.
 - (b) The applicant demanded and achieved removal of the chassis from the jig despite warnings by the respondent as to the risk of twisting on removal.
 - (c) The only reason offered by the applicant for the removal was that he had no funds left to finish the fabrication.
 - (d) No complaint was made at that time by the applicant and the applicant had at all times expressed complete satisfaction with the respondent's work.

- (e) The respondent's photographs were taken prior to the removal of the chassis from the rig and they highlight the twisting of the chassis subsequent to the removal from the rig when compared to the applicant's photographs taken subsequent to the removal of the chassis from the rig.
 - (f) The applicant accepted the risk in twisting in the chassis by removal from the jig and subsequent loading and compression of the chassis on the applicant's trailer.
 - (g) The chassis was an incomplete work in progress when removed by the applicant from the respondent's premises.
 - (h) The respondent's photographs were taken pre-removal compared to the applicant's taken post-removal of the chassis from the jig demonstrate significant damage was caused to the chassis by the applicant's removal and transportation thereof contrary to and despite the respondent's recommendation.
- [21] The applicant has provided documentation which I accept supports his claim.
- [22] I have had regard to all of the reports that have been tendered and I note the contents of them, including the conclusions provided.
- [23] In my view based on that material the applicant has made out his case and I find that the work for which the respondent charged and was paid was not of a sufficient or appropriate standard and in fact caused a detriment to the chassis as provided to him such that it could not be economically restored to the state it was given to the respondent in the first place. In that respect I have regard to the report prepared by Timothy J Bartrop dated 29 February 2016.
- [24] I note the report prepared for the respondent in response to the report by Mr Bartrop by Mr Franz Chalupa of Quantum Mechanical. He takes issue with Mr Bartrop's report and concludes that:
- (a) The work that was completed was done using good engineering practices;
 - (b) The uncompleted work is irrelevant as it was not finished and cannot be evaluated;
 - (c) The photo of the alleged "jagged cutout" is actually an existing chassis hole, where the edge of the hole has fully rusted away;
 - (d) The report is completely biased. It is full of opinions, accusations, innuendos, derogatory accusations towards Peter Neal's workmanship, vague statements and claims unsubstantiated by facts; and
 - (e) The Chassis can be used to continue to build the planned vehicle as long as it is done using good engineering practices.
- [25] I have had regard to the issues identified in the expert conclave report and those that have been agreed. Reports and views of the experts in this matter are important in the determination of the matter. As I have indicated I have taken into account those reports and the various contentions. I have noted the qualifications of those involved. The contents of the reports are of course important, however in my view there is an

importance in the viewing item being inspected on and applying the appropriate technical knowledge to that view. In my view the reasoning by Mr Bartrop is supported by appropriate reasoning and is persuasive. Likewise in my view his conclusion based on the material and for the reasons he advocates is appropriate. I note his conclusion that the chassis is not fit for purpose. I note the contentions of the experts for the respondent is to the contrary. I note that much of the complaints made by the expert for the respondent was an attack on the report of Mr Bartrop. Having examined all of the evidence available including the expert evidence, I accept the conclusions put forward by Mr Bartrop and in particular his assessment that the chassis should be condemned and that it could not practically be repaired and that the contractor should not be allowed to attempt a repair. In addition I note his conclusion that if the chassis was to be built from scratch and not repaired, because it cannot be repaired, he would estimate the cost to be in the vicinity of \$21,000.00.

- [26] For the reasons I have articulated above I allow the claim made by the applicant and order that the respondent pay the applicant the sum of \$25,000.00.